

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND IN CONTINUATION OF ORDERS DATED MARCH 5, 2019 IN THE MATTER OF SUPREME TEX MART LTD, IN RESPECT OF SANJAY GUPTA (PAN-ABMPG6231C).

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1. The Securities and Exchange Board of India (“SEBI”) based on preliminary examination, passed two ex-parte ad-interim orders – the first order dated February 23, 2017 (“**first interim order**”) against Gautam Sanjay Khandelwal and the second order dated November 1, 2017 (“**second interim order**”) against 10 entities including Sanjay Gupta (hereinafter referred to as “Noticee”), in the matter of Supreme Tex Mart Ltd (hereinafter referred to as “**Supreme**”/“**STML**”/ “**the company**”). While the investigation was still ongoing, SEBI (after granting an opportunity of hearing and upon consideration of the replies of entities involved in the interim orders) confirmed the directions passed in the interim orders separately vide confirmatory orders dated June 30, 2017 and October 30, 2018.
2. SEBI conducted detailed investigation pursuant to the aforesaid two interim orders. The trading activity between the period June 1, 2016 and October 31, 2016 (hereinafter referred to as “Investigation period”) was specifically the subject matter of the investigation. The investigations revealed that promoters/directors of STML and related entities had engaged in a premeditated, manipulative practice of indirectly sending SMSes recommending “Buy” for STML and selling during the period when price and volumes in the scrip of STML increased as a result of the SMSes. The investigations also *inter-alia* revealed that out of 14 connected entities, 10 were found to have made unlawful or ill-gotten gains from the sale of STML shares. In order to prevent any diversion of unlawful gains prior to the adjudication of the case on merits, SEBI vide order dated March 5, 2019 impounded the unlawful gains aggregating to a sum of Rs. 18,23,00,461/- (*gain of Rs.14,25,93,152/- + interest of Rs. 3,97,07,309*), from the 10 entities, including the Noticee. In the aforesaid Impounding Order, the Noticee was given an opportunity to file replies and to indicate whether he wished to avail an opportunity of personal hearing in the matter.

3. As directed in paragraph 10(g) of the Impounding Order, Noticee vide letter dated March 19, 2019 submitted details of his movable & immovable properties, bank account, demat account and Mutual fund details. Further Noticee vide letter dated March 29, 2019 submitted reply to the Impounding order and requested for personal hearing and the same was scheduled on June 24, 2019. In the personal hearing the Noticee appeared along with Advocate Dr. S. P Sharma. The Noticee vide replies dated March 29, 2019 and June 24, 2019 and in the submissions advanced during the personal hearing stated the following:-

- i. *Noticee resigned from the company on **April 19, 2013**;*
- ii. *That the Impounding Order dated **05.03.2019** is based on Ad interim Ex-parte **Order** dated **01.11.2017** and Confirmatory Order dated **30.10.2018**;*
- iii. *That the Impugned Impounding Order has wrongly drawn a conclusion that there has been unlawful gains by the 10 (ten) entities including the noticee, without alleging any issue & allegations made, except as Promoter and Joint Account Holder, which was not the case, whereas the noticee had sold the Shares in normal course of business;*
- iv. *That the conclusion of unlawful gains and the interest thereon is illegal and based on prejudice and conjectures & surmises and without considering the legal proposition that a corporate entity cannot have a joint account with an individual and cannot even allow operation of the Account to a Director, who has already ceased from Directorship of the Company over three years prior to the investigation period;*
- v. *That the impugned Impounding Order dated 05.03.2019 has put certain restrictions as referred to in Para 10 of the Order. In fact, the impugned Ad Interim Ex-parte Order dated 01.11.2017 prima-facie concluded that Promoters/Directors of STML and related entities had engaged in a pre-mediated, manipulative practice of indirectly sending SMSs recommending buy for STML and selling during the period when volume in the scrip of STML increased, as a result of SMSs. This fact is wrong and illegal and not based on any material on record;*
- vi. *That the only allegation against the noticee was that the Company "STML" Account is joint account with the noticee. The letters stated above and another letter from UCO Bank dated **28.05.2019** denied the same and confirmed that it was not a joint account;*
- vii. *That the sale & purchase of Shares by the noticee was squarely on the basis of market information and the best available buy & sell rates in existence at the trading terminals at the point of purchase / sale orders and there is no direct linkage with the bulk SMSs and the prices, as the noticee was having no direct relationship or control in day to day affairs of the Company qua the current account maintained by the company in UCO Bank, whereas, as per*

*UCO Bank Certificate, the noticee was not even the authorized signatory to operate the current account of the company, what to talk about having Joint Account with the Company;*

- viii. That the noticee has no other source of income except share trading, since the noticee disassociated with "STML". The noticee, thus sold shares as he felt price was attractive to get much needed funds to meet day-to-day household expenses. Sale of Shares was an act like a member of public, not as a part of identified entities nor based on price manipulation actions;*
- ix. Admittedly, the transactions impugned in the said Order relate to the year 2016 i.e. around 2 years ago. Thus, there has been an enormous time gap between the date of impugned transactions and the date of the said Order. This itself demonstrates that there is no imminent danger or urgency to pass any ex-parte order. Further, admittedly, SEBI had done investigation for the period **01.07.2017 to 31.01.2017**. During the course of investigations, the noticee had been fully cooperating with SEBI and had provided all the information explanation as sought by SEBI from time to time. But, the information explanations provided were not considered but, wrong conclusion was drawn. However, drastic and severe directions have been issued against the noticee with unnecessary haste and ex pane. This action of SEBI, which has resulted in enormous financial and reputational adversity without proper adjudication of various issues, is contrary to the well-established principles of Natural Justice;*
- x. That since the Impounding Order dated 05.03.2019 as stated above is based on Ad Interim Ex-parte Order dated **01.11.2017** and Confirmatory Order dated **30.10.2018**, which has already been quashed by the Hon'ble SAT, hence the Impounding Order is not based on facts & circumstances and need to be withdrawn / quashed with immediate effect;*
- xi. That further, as stated no unlawful or ill-gotten gains have been made out by the noticee and there is no question at all with other Entities, as alleged, therefore, the Order passed making it liable jointly or severally, as far as related to the noticee needs to be withdrawn / quashed.*

4. I have considered the allegations against the noticee and replies/submissions of the noticee. I note that during the investigation period, on BSE the scrip opened at a price of Rs. 3.33 on June 01, 2016, touched an intraday high of Rs. 11.14 on September 06, 2016 and closed at Rs. 5 on October 30, 2016. The daily average volume before the investigation period (two months prior) was 15,229 shares and increased to 4,48,806 shares and then during the three months after the investigation period decreased to 2,40,562 shares. Similarly, on NSE during the investigation period the scrip opened at a price of Rs. 3.20 on June 01, 2016, touched an intraday high of Rs. 11.20 on September 06, 2016 and closed at Rs. 4.95 on October 30, 2016. The daily average volume on NSE before the investigation period (two months prior) was 34,745 shares, which then increased to 10,44,905 shares during the investigation period and then during

the three months period after the investigation period declined to 5,96,873 shares. I also note that during the investigation period unsolicited bulk SMSes recommending the purchase of STML shares were sent by connected entities, fraudulently inducing gullible investors to buy the shares of STML. These connected entities received funds from UCO bank account 05340200012981 belonging to STML. As per the statement obtained from UCO bank, during the period from June 1, 2016 to November 30, 2016, the aforesaid STML bank account with UCO bank, showed Ram Lal Gupta, Sanjay Gupta (noticee) and Ajay Gupta as joint account holder. During the investigation period, Sanjay Gupta the noticee sold 36,55,065 shares of STML on NSE and 13,74,118 shares of STML on BSE.

5. I note that the directions contained in the second interim order was issued against the Noticee amongst others and the same was subsequently confirmed vide the confirmatory order dated October 30, 2018 based on the fact that the Noticee was a joint account holder of STML, during the relevant period. Noticee also continued to be a promoter of STML during the relevant period. The Noticee had sold a substantial part of his shareholding during the investigation period and made profits. Thus, direction impounding the unlawful gains was passed vide order dated March 5, 2019, against the Noticee and 9 others, based on the said facts.
6. I find that the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "Hon'ble SAT") had an occasion to deal with the aforesaid facts with respect to the Noticee in Appeal No. 89/2019 (Sanjay Gupta Vs. SEBI), wherein the Noticee had challenged the second confirmatory order passed against him. The Hon'ble Tribunal, disposed of the appeal vide its order dated June 04, 2019 giving certain findings in favour of the Appellant-Noticee mainly on two grounds – (i) that he is not liable for the fund transfer from STML to Neelesh Lahoti and (ii) that the sale of his shareholding in itself is not manipulative. The relevant findings are extracted hereunder:

*“10. ....In the instant case, prima–facie, we find that the bank statement is as a result of a system flaw of the Bank’s computer program. Normally, the bank prepares its own software. Various categories are shown viz., Primary holders, first joint account holder and so on. In the instant case, there may not have been a column for an “authorized signatory” and accordingly, the name of the appellant was shown as a joint holder.”*

*“14. The fact that the appellant sold a substantial portion of his holdings during the increase of the price of the scrip cannot by itself lead to a conclusion of the appellant indulged in any manipulative or fraudulent practice which would come under PFUTP Regulations unless there was further evidence to show that the appellant was acting in concert as a homogenous group with other entities.....”*

Based on the above findings, the Hon'ble Tribunal was pleased to set aside the confirmatory order dated October 30, 2018, qua the Noticee. The relevant part of the order is reproduced hereunder:

*"21. For the reasons stated aforesaid, the ex-parte ad-interim order as confirmed by the confirmatory order cannot be sustained and are quashed in so far as it relates to the appellant. It would be open to SEBI to pass a fresh order in accordance with the principles of natural justice if and when fresh evidence comes before it....."*

7. I note that the Hon'ble SAT has given liberty to SEBI to pass a fresh order against the Noticee if 'fresh evidence', besides the evidence considered at the stage of the confirmatory order is available with SEBI against the Noticee. Upon a perusal of the available records and upon an appreciation of the submissions of the Noticee, I do not find any new evidence /reason to continue with the direction contained in the impounding order dated March 5, 2019 against the Noticee.

#### **ORDER**

8. In view of the foregoing, I, in exercise of the powers conferred on me under Section 19 of the SEBI Act, read with sections 11 and 11B thereof, hereby revoke the directions contained in Impounding order dated March 5, 2019 against Sanjay Gupta (PAN-ABMPG6231C).
9. A copy of this Order shall be forwarded to the recognised stock exchanges, registered depositories and banks for necessary compliance.
10. The Banks are advised to implement the above directions immediately.

**DATE: June 28, 2019**

**PLACE: Mumbai**

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**